



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2016-0060; FRL-9945-84-Region 2]

**Approval of Air Quality Implementation Plans; Puerto Rico;
Infrastructure Requirements for the 1997 and 2008 Ozone, 1997 and 2006 Fine Particulate
Matter and 2008 Lead NAAQS**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving most elements of the five State Implementation Plan (SIP) revision submittals from the Commonwealth of Puerto Rico to demonstrate that the State meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 1997 and 2008 ozone, 1997 and 2006 fine particulate matter (PM_{2.5}) and 2008 lead National Ambient Air Quality Standards (NAAQS). The SIP is required to address basic program elements, including, but not limited to: regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. In this rulemaking action, EPA is approving, in accordance with the requirements of the CAA, the infrastructure SIP submissions with the exception of some portions of the submittals addressing Prevention of Significant Deterioration (PSD).

DATES: This rule is effective on [Insert date 30 days from date of publication in the **Federal Register**].

ADDRESSES: EPA has established a docket for this action under Docket ID No. **EPA-R02-OAR-2016-0060**. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through www.regulations.gov.

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SUPPLEMENTARY INFORMATION: The supplementary Information section is arranged as follows:

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I. What is the Background Information?

On July 18, 1997, the Environmental Protection Agency (EPA) promulgated a revised national ambient air quality standard (NAAQS or standards) for ozone (62 FR 38856) and a new NAAQS for fine particle matter (PM_{2.5}) (62 FR 38652). The revised ozone NAAQS was based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm. The new PM_{2.5} NAAQS established a health-based annual standard of 15.0 micrograms per cubic meter (µg/m³) based on a 3-year average of annual mean PM_{2.5} concentrations, and a 24-hour standard of 65 µg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations.

On October 17, 2006 (71 FR 61144), effective December 18, 2006, EPA revised the 24-hour average PM_{2.5} primary and secondary NAAQS from 65 µg/m³ to 35 µg/m³. As required by section 110(a)(1) of the CAA, the 110(a)(2) submittals were due within three years after promulgation of the revised standard.

On March 27, 2008 (73 FR 16436) EPA strengthened its NAAQS for ground-level ozone, revising the 8-hour primary ozone standard to 0.075 ppm. EPA also strengthened the secondary 8-hour ozone standard to the level of 0.075 ppm making it identical to the revised primary standard.

On November 12, 2008 (73 FR 66964), EPA promulgated a revised NAAQS for lead. The Agency revised the level of the primary lead standard from $1.5 \mu\text{g}/\text{m}^3$ to $0.15 \mu\text{g}/\text{m}^3$. The EPA also revised the secondary NAAQS to $0.15 \mu\text{g}/\text{m}^3$ and made it identical to the revised primary standard.

Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affect the content of the submission. The content of such SIP submission may also vary depending upon what provisions the state's existing SIP already contains.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. As mentioned earlier, these requirements include basic SIP elements such as requirements for monitoring, basic program

requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS.

EPA is acting on five SIP revision submittals from the Commonwealth of Puerto Rico Environmental Quality Board (PREQB) to satisfy the requirements of section 110(a)(2) of the CAA for the 1997 and 2008 ozone, 1997 and 2006 PM_{2.5} and 2008 lead NAAQS. On November 29, 2006, PREQB submitted SIP revisions addressing the infrastructure requirements for the 1997 ozone and PM_{2.5} NAAQS. On January 22, 2013, PREQB submitted SIP revisions addressing the infrastructure requirements for the 2006 PM_{2.5} and 2008 ozone NAAQS. On January 31, 2013, PREQB submitted SIP revisions addressing the infrastructure requirements for the 2008 lead NAAQS. On April 16, 2015, PREQB supplemented the January 22, 2013 submittal for the 2006 PM_{2.5} NAAQS. On February 1, 2016, PREQB submitted additional provisions for inclusion into the SIP which address infrastructure SIP requirements for 1997 and 2008 ozone, 1997 and 2006 PM_{2.5} and 2008 lead NAAQS. Each of the infrastructure SIP submittals addressed the following infrastructure elements for the applicable NAAQS which EPA is approving pursuant to section 110(a)(2) of the CAA. Specifically sections 110(a)(2)(A), (B), portions of (C), portions of (D), (E), (F), (G), (H), portions of (J), (K), (L), and (M) for the 1997 and 2008 ozone, 1997 and 2006 PM_{2.5} and 2008 lead NAAQS.

II. What comments did EPA receive in response to its proposal?

In response to EPA's proposed approval of Puerto Rico's SIP revision, a comment was received

from one interested party. The comment and EPA's response are as follows:

Comment

The comment asserts that the proposed rule is confusing and hard to follow. The comment states that PREQB made 5 revisions over the past 11 or so years and that the last public meetings were 5 years ago. The comment states that this piecemeal approach is not useful for the public to follow and that EPA's explanation about why it is justified in accepting this approach is hard to understand. Commentor notes that the examples of New Mexico and Tennessee cover much shorter timeframes. Commentor states that the purpose of the current SIP is to show PREQB can implement, enforce and maintain the NAAQS covered by the SIP and asks how have they proven this. The comment references a newspaper article and states that the Puerto Rico Electric Power Authority (PREPA) is the main polluter on the island and that it is embroiled in scandal related to burning substandard fuel that calls into question the records submitted and the roles of PREQB and USEPA. Commentor asserts that it is not clear the PREQB is capable of enforcing the SIP and protecting our air and health of our citizens.

Response

EPA disagrees that PREQB is taking a piecemeal approach to revising the SIP. Under CAA sections 110(a)(1) and 110(a)(2), each state is required to submit a SIP that provides for the implementation, maintenance, and enforcement of each primary and secondary NAAQS. Moreover, CAA sections 110(a)(1) and 110(a)(2) require each state to make this new SIP submission within 3 years after promulgation of a new or revised NAAQS. In addition, EPA is proposing action on these SIP revisions simultaneously, and not separately, since each SIP

revision addresses the infrastructure requirements of the CAA. PREQB provided the necessary public notice and public hearings for each SIP revision as required by the CAA. Public hearings were held by PREQB for the lead infrastructure SIP on October 10, 2011. Public hearings were held by PREQB for the ozone and PM_{2.5} infrastructure SIPs on December 19, 2011. With respect to public hearings, EPA's proposed approval is not based on how many public meetings PREQB holds, or how long ago the last one was held. Rather EPA's proposed approval is based, in part, on PREQB's ability to hold a public hearing on each revision to the SIP.

The proposed timeframes for other state SIP actions have no bearing on EPA's proposed approval of Puerto Rico's SIP submittal. Footnote 4 of the proposal cites New Mexico SIP actions as an example in support of EPA's statement, in the proposal, "If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action." 81 FR 8457. Similarly, footnote 5 of the proposal cites Tennessee SIP actions as an example in support of EPA's statement in the proposal that, "EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submittal." 81 FR 8457.

Commentor is referred to the technical support document (TSD) in the docket for this matter which describes in detail PREQB's procedures for implementing, enforcing and maintaining the

NAAQS. EPA's proposed approval is based on PREQB having these procedures in place.

Finally, EPA is not a party to and cannot comment on the ongoing litigation that the Commentor cites with respect to PREPA.

III. What action is EPA taking?

EPA is approving Puerto Rico's infrastructure submittals dated November 29, 2006, January 22, 2013 and January 31, 2013, and supplemented April 16, 2015 and February 1, 2016, for the 1997 ozone and PM_{2.5}, 2008 ozone and 2006 PM_{2.5}, and 2008 lead NAAQS, respectively, as meeting the requirements of section 110(a)(2) of the CAA, including specifically section 110(a)(2)(A), (B), (C)(with the exception of program requirements for PSD), (D)(i)(II) (with the exception of program requirements related to PSD), (D)(ii) (with the exception of program requirements related to PSD), (E), (F), (G), (H), (J) (with the exception of program requirements related to PSD), (K), (L), and (M).

EPA is incorporating by reference Act 416 (Commonwealth of Puerto Rico's "Environmental Public Policy Act"), Title II, "On the Environmental Board," Section 7, "Creating the Board; Members; Terms," sections A. and D., approved September 22, 2004 and effective six months after its approval and Act 1 ("Puerto Rico Government Ethics Act of 2011"), Chapter V, "Financial Reports," (approved January 3, 2012 and effective January 1, 2012, except for Sections 5.5(a) and 5.8(a), which became effective 180 days after the effective date), for inclusion into Puerto Rico's SIP. These provisions are intended to apply to any person subject to CAA section 128, and are included in the SIP to address the requirements of CAA sections

110(a)(2)(E)(ii) and 128 for the 1997 ozone, 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 lead, and 2008 ozone NAAQS.

EPA is disapproving the following infrastructure SIP requirements as they relate to the PSD program because Puerto Rico lacks a State adopted PSD rule to satisfy CAA sections 110(a)(2)(C), (D)(i)(II), (D)(ii) and (J) for the 1997 and 2008 ozone NAAQS, 1997 and 2006 PM_{2.5} NAAQS, and 2008 lead NAAQS. It should be noted that a Federal Implementation Plan (FIP) clock will not be started because a PSD FIP is currently in place, and sanctions will not be triggered. Since Puerto Rico is not required to address the visibility portion of section 110(a)(2)(J) in the context of an infrastructure SIP, and therefore did not make a submission, action on this sub-element is not applicable.

A detailed analysis of EPA's review and rationale for approving and disapproving elements of the infrastructure SIP submittals as addressing these CAA requirements may be found in the February 19, 2016 proposed rulemaking action (81 FR 8455) and Technical Support Document (TSD) which are available on line at www.regulations.gov, Docket ID Number **EPA-R02-OAR-2016-0060**.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Commonwealth of Puerto Rico Statutes described in the proposed amendments

to 40 CFR part 52 set forth below.

EPA is incorporating by reference Act 416 (Commonwealth of Puerto Rico's "Environmental Public Policy Act"), Title II, "On the Environmental Board," Section 7, "Creating the Board; Members; Terms," sections A. and D., approved September 22, 2004, and Act 1 ("Puerto Rico Government Ethics Act of 2011"), Chapter V, "Financial Reports," approved January 3, 2012, for inclusion into Puerto Rico's SIP to address the requirements of CAA sections 110(a)(2)(E)(ii) and 128.

The EPA has made, and will continue to make, these documents generally available electronically through <http://www.regulations> (see the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country

located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days after date of publication in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping

requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: May 2, 2016.

Judith A. Enck,
Regional Administrator,
Region 2.

Editorial Note: This document was received for publication by the Office of the Federal Register on August 31, 2016.

For the reasons set forth in the preamble, the Environmental Protection Agency amends part 52 of chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart BBB – Puerto Rico

2. Section 52.2720 is amended by adding paragraph (c)(39) to read as follows:

§ 52.2720 Identification of plan.

* * * * *

(c) * * *

(39) Revisions to the State Implementation Plan submitted by the Puerto Rico Environmental Quality Board (EQB) on November 29, 2006, and supplemented February 1, 2016 for the 1997 ozone and PM_{2.5} NAAQS; dated January 22, 2013, and supplemented April 16, 2015 and February 1, 2016 for the 2006 PM_{2.5} and supplemented February 1, 2016 for the 2008 ozone NAAQS; and dated January 31, 2013 and supplemented February 1, 2016 for the 2008 lead NAAQS.

(i) *Incorporation by reference.* These provisions are intended to apply to any person subject to CAA section 128, and are included in the SIP to address the requirements of CAA sections 110(a)(2)(E)(ii) and 128.

(A) Act 416 (Commonwealth of Puerto Rico's "Environmental Public Policy Act"), Title II, "On the Environmental Board," Section 7, "Creating the Board; Members; Terms," sections A. and D., approved September 22, 2004;

(B) Act 1 ("Puerto Rico Government Ethics Act of 2011"), Chapter V, "Financial Reports," approved January 3, 2012.

3. Amend § 52.2723 by revising the section heading and the title of the table and adding a heading and the entries "Act 1" and "Act 416" at the end of the table to read as follows:

§ 52.2723 EPA-approved Puerto Rico regulations and laws.

REGULATION FOR THE CONTROL OF ATMOSPHERIC POLLUTION AND PUERTO RICO LAWS

Puerto Rico regulation	Commonwealth effective date	EPA approval date	Comments
* * * * *			
PUERTO RICO LAWS			
Act 1 ("Puerto Rico Government Ethics Act of 2011"), Chapter V, "Financial Reports."	January 3, 2012	Insert date of publication in the Federal	These provisions are intended to apply to any person subject to Clean Air Act section 128, and are included in the SIP for

Puerto Rico regulation	Commonwealth effective date	EPA approval date	Comments
		Register], [insert Federal Register citation]	the limited purpose of satisfying the requirements of Clean Air Act sections 110(a)(2)(E)(ii) and 128. January 3, 2012 is the Commonwealth approval date
Act 416 (Commonwealth of Puerto Rico's "Environmental Public Policy Act"), Title II, "On the Environmental Board," Section 7, "Creating the Board; Members; Terms," sections A. and D.	September 22, 2004	[Insert date of publication in the <u>Federal Register</u>], [insert Federal Register citation]	These provisions are intended to apply to any person subject to Clean Air Act section 128, and are included in the SIP for the limited purpose of satisfying the requirements of Clean Air Act sections 110(a)(2)(E)(ii) and 128. September 22, 2004 is the Commonwealth approval date.

4. Add § 52.2730 to read as follows:

§ 52.2730 Section 110(a)(2) infrastructure requirements.

(a) *1997 8-hour ozone and the 1997 PM_{2.5} NAAQS--(1) Approval.* Submittal from Puerto Rico dated November 29, 2006 and supplemented February 1, 2016, to address the CAA infrastructure requirements for the 1997 ozone and the 1997 PM_{2.5} NAAQS. This submittal satisfies the 1997 ozone and the 1997 PM_{2.5} NAAQS requirements of the Clean Air Act (CAA) 110(a)(2)(A),(B), (C)(with the exception of program requirements for PSD), (D)(i)(II) and (ii)(with the exception of program requirements related to PSD),(E), (F), (G), (H), (J) (with the exception of program requirements related to PSD), (K), (L), and (M).

(2) *Disapproval.* Submittal from Puerto Rico dated November 29, 2006 and supplemented February 1, 2016, to address the CAA infrastructure requirements for the 1997 ozone and the 1997 PM_{2.5} NAAQS are disapproved for the following sections: 110(a)(2)(C)(PSD program only), (D)(i)(II), PSD program only), (D)(ii)(PSD program only) and (J)(PSD program only).

These requirements are being addressed by §52.2729 which has been delegated to Puerto Rico to implement.

(b) *2008 ozone and the 2006 PM_{2.5} NAAQS--(1) Approval.* Submittal from Puerto Rico dated January 22, 2013, supplemented February 1, 2016 to address the CAA infrastructure requirements for the 2008 ozone NAAQS and supplemented April 16, 2015 and February 1, 2016 to address the CAA infrastructure requirements for the 2006 PM_{2.5} NAAQS. This submittal satisfies the 2008 ozone and the 2006 PM_{2.5} NAAQS requirements of the Clean Air Act (CAA) 110(a)(2)(A),(B), (C)(with the exception of program requirements for PSD), (D)(i)(II) and (ii)(with the exception of program requirements related to PSD),(E), (F), (G), (H), (J) (with the exception of program requirements related to PSD), (K), (L), and (M).

(2) *Disapproval.* Submittal from Puerto Rico dated January 22, 2013 and supplemented April 16, 2015 and February 1, 2016, to address the CAA infrastructure requirements for the 2008 ozone and the 2006 PM_{2.5} NAAQS are disapproved for the following sections: 110(a)(2)(C)(PSD program only), (D)(i)(II)(PSD program only), (D)(ii)(PSD program only) and (J)(PSD program only). These requirements are being addressed by §52.2729 which has been delegated to Puerto Rico to implement.

(c) *2008 lead NAAQS--(1) Approval.* Submittal from Puerto Rico dated January 31, 2013 and supplemented February 1, 2016, to address the CAA infrastructure requirements for the 2008 lead NAAQS. This submittal satisfies the 2008 lead NAAQS requirements of the Clean Air Act (CAA) 110(a)(2)(A),(B), (C)(with the exception of program requirements for PSD), (D)(i)(II)

and (ii)(with the exception of program requirements related to PSD),(E), (F), (G), (H), (J) (with the exception of program requirements related to PSD), (K), (L), and (M).

(2) *Disapproval*. Submittal from Puerto Rico dated January 31, 2013 and supplemented February 1, 2016, to address the CAA infrastructure requirements for the 2008 lead NAAQS are disapproved for the following sections: 110(a)(2)(C)(PSD program only), (D)(i)(II)(PSD program only) , (D)(ii)(PSD program only) and (J)(PSD program only). These requirements are being addressed by §52.2729 which has been delegated to Puerto Rico to implement.

[FR Doc. 2016-21326 Filed: 9/12/2016 8:45 am; Publication Date: 9/13/2016]